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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,198	12/15/2005	David Murray Mcrose	010200-127	4769
21836 7590 06/16/2010 HENRICKS SLAVIN AND HOLMES LLP SUITE 200 840 APOLLO STREET EL SEGUNDO, CA 90245				
EXAMINER WEAVER, SUE A				
ART UNIT 3781		PAPER NUMBER		
MAIL DATE 06/16/2010		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/529,198

**Applicant(s)**

MELROSE, DAVID MURRAY

**Examiner**

Sue A. Weaver

**Art Unit**

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 March 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 36-80 is/are pending in the application.
- 4a) Of the above claim(s) 74-80 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 36-44, 47-58 and 60-73 is/are rejected.
- 7) ☒ Claim(s) 45, 46 and 59 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 March 2010 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The drawings were received on 3/8/2010. These drawings are accepted.

However it is noted that there isn't any lead line for 5 in Figure 14.

Newly submitted claims 74-80 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Group I      Claims 36-73, drawn to a container with a flexible bottom, classified in class 220, subclass 609. The inventions are distinct, each from the other because of the following reasons:

Group II.      Claims 74-80, drawn to a method of using a container with a flexible bottom, classified in class 141, subclass 1.

2. Inventions of Group I and Group II are related as product and process of use.

The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product. See MPEP § 806.05(h). In the instant case the container can be used in a materially different process such as applying pressure to the container when it is opened to invert the bottom and present the product for removal as shown in the prior art. Furthermore the features claimed are not novel and any novelty resides in species not claimed in the method claims thereby resulting in any lack of unity.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 74-80 are withdrawn from consideration

as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 38,39,47-52,55,60,61,63, 65-70 and 72 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

4. Applicant is advised that "an inverted position" in claims 38, 39, 47, 51 and 66 since applicant has failed to relate the position to that set forth in claim 36. Applicant is advised that there is no orientation set forth in claim 55 to establish what direction defines a widest or narrowest portion. Widest with respect to what? In claims 58 and 59 applicant has failed to set forth any orientation for a sidewall with respect to the body or container structure or claim 36. It is merely claimed as an isolated element.

5. In a similar manner applicant has failed to establish any relationship between the projecting portion of claims 60 and 61 and the flutes and conical area in claim 65 and the inclined portion in claim 36. Similarly applicant has failed to establish a clear relationship between an inwardly inclined shaped portion in claim 72 and the inclined portion in claim 36.

6. Claim 63 recites the limitation "the upwardly projecting portion" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim.

7. Claims 36-44,47-49,51-54,56-58,60-64,66 and 70-72 insofar as they are definite, are rejected under 35 U.S.C. 103(a) as being unpatentable over Wienmann et al '554.

8. Applicant claims a new combination with a container having a top with an opening as body and lower portion with a closed base and a pressure panel comprising a portion at an angle of more than 20 degrees relative to a plane orthogonal to the longitudinal axis. Wienmann et al suggest just such a structure in a can with a flexible bottom with the panel portion defined at 34 for example which inverts as shown in figures 2 and 3. Note further the change in standing or support ring at Figures 2 and 3 from a narrow to wider portion and the inwardly projecting base 70. The angle 42 is greater than 10 degrees and may fall in the range between 30 and 45 degrees. 55 may be considered to define the control portions with 34 as the initiator portion.
9. Many of the claims are directed to statements of desired result or intend use which do not distinguish the structure insofar as it is claimed over the structure of Wienmann et al.
10. Claims 73 is rejected under 35 U.S.C. 103(a) as being unpatentable over the reference as applied to claim 36 above, and further in view of Brown '033.
11. To have alternately made the container of plastic would have been obvious in view of Brown teaching such alternate materials.
12. Claims 45, 46 and 59 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 1-35 have been canceled obviating the previous rejections and objections
13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents show other bottom configurations.

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. The following are suggested formats for either a Certificate of Mailing or Certificate of Transmission under 37 CFR 1.8(a). The certification may be included with all correspondence concerning this application or proceeding to establish a date of mailing or transmission under 37 CFR 1.8(a). Proper use of this procedure will result in such communication being considered as timely if the established date is within the required period for reply. The Certificate should be signed by the individual actually depositing or transmitting the correspondence or by an individual who, upon information and belief, expects the correspondence to be mailed or transmitted in the normal course of business by another no later than the date indicated.

### **Certificate of Mailing**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to:

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(Date)

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### **Certificate of Transmission**

I hereby certify that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office, Fax No. ( ) \_\_\_\_\_ - \_\_\_\_\_ on \_\_\_\_\_.  
(Date)

Typed or printed name of person signing this certificate:

\_\_\_\_\_

Signature: \_\_\_\_\_

Registration Number: \_\_\_\_\_

Please refer to 37 CFR 1.6(d) and 1.8(a)(2) for filing limitations concerning facsimile transmissions and mailing, respectively.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sue A. Weaver whose telephone number is (571) 272-4548. The examiner can normally be reached on Tuesday-Friday (5:30-4) with chemo therapy every other Thursday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, is Anthony Stashick\_. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sue A. Weaver/  
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